SUPREME COURT, U. S.

JAN 16 1975

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-785

CHARLES EVES AND FERN EVES,
Petitioners,

vs.

FORD MOTOR COMPANY AND NATIONAL COOPERATIVES, INC.,
Respondents.

RESPONDENT FORD MOTOR COMPANY'S BRIEF IN OPPOSITION TO THE GRANTING OF THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether a Federal District Court, which has rendered a final judgment against plaintiffs who sought its jurisdiction, may protect and effectuate its judgment by restraining relitigation of identical issues by identical parties in a state court which has refused to give effect to the prior federal judgment.

STATUTORY PROVISIONS INVOLVED

UNITED STATES CODE, Title 28, § 1332(a):

"(a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and is between—

(1) citizens of different States;

(2) citizens of a State, and foreign states or citizens or subjects thereof; and

(3) citizens of different States and in which foreign states or citizens or subjects thereof are additional parties."

UNITED STATES CODE, Title 28, § 2283

The foregoing statute was improperly quoted in the petition (Pet. 2). The correct quotation is as follows:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."

FEDERAL JURISDICTION IN THE FIRST INSTANCE

Petitioners correctly note that they originally invoked federal diversity jurisdiction pursuant to 28 U.S.C. § 1332(a). Petitioners incorrectly state that respondent relies on 28 U.S.C. § 2283 to create federal jurisdiction to issue the injunction in question (Pet. 7). The federal jurisdiction to issue the injunction is ancillary to the jurisdiction originally invoked by the petitioners. 28 U.S.C. § 2283 merely serves to limit the exercise of that jurisdiction to circumstances such as exist here. The District Court's finding that the jurisdictional amount was lacking, after it had entered its judgment, referred to by petitioners (Pet. 7), was held moot by the Court of Appeals (Pet. A-8).

ARGUMENT

THE COURT OF APPEALS PROPERLY UPHELD THE DISTRICT COURT'S ISSUANCE OF THE INJUNCTION

I. The Issue Before the Court

The petitioners have now abandoned all of the contentions they asserted in the Court of Appeals, except their assertion that the District Court, by issuing the injunction to protect and effectuate its judgment, was reviewing a prior decision made by the Indiana Court of Appeals. Specifically, petitioners assert that the Court of Appeals' decision upholding the District Court's injunction is in conflict with the applicable decisions of this Court. In fact, when the District Court enjoined petitioners from further prosecution of their action in the State Court, it was in no fashion reviewing the State Appellate Court's prior decision. As the Court of Appeals properly noted, petitioners' assertion in that regard is nothing more than an erroneous characterization of the District Court's action (Pet. A-4). Furthermore, the Court of Appeals' decision is not in conflict with the applicable decisions of this Court.

II. The District Court Had Ancillary Jurisdiction to Issue the Injunction

Petitioners do not question the jurisdiction of the District Court to restrain relitigation in State Court of what petitioners admit are identical issues involving identical parties (Pet. 4-5). Of course, such ancillary jurisdiction has long existed. *Supreme Tribe of Ben Hur* v. *Cauble*, 255 U.S. 356 (1921); *Julian* v. *Central Trust Company*, 193 U.S. 93 (1904). Petitioner thus seeks review by this Court merely as to the propriety of this particular injunction.

Unquestionably, the exercise of such jurisdiction is limited to those cases falling within the purview of one of the statutory exceptions set forth in 28 U.S.C. § 2283. *Mitchum* v. *Foster*, 407 U.S. 225 (1972); *Atlantic Coast Line Railroad Company* v. *Brotherhood of Locomotive Engineers, et al.*, 398 U.S. 281 (1970).

The statutory exception operable in this case, which petitioners omitted in their citation of 28 U.S.C. § 2283 (Pet. 2), is the one permitting a District Court to restrain litigation of identical issues in a State Court in order to protect and effectuate the District Court's prior judgment on those issues. That "relitigation exception" was embodied in the statute in 1948 by Congress for the specific purpose of empowering Federal Courts to enjoin relitigation in State Courts of cases and controversies fully adjudicated in Federal Courts, *Mitchum* v. *Foster*, 407 U.S. 225, 236, note 21 (1972), and it has been consistently employed by Federal Courts to effect its purpose. *See Lee* v. *Terminal Transport Co., Inc.*, 282 F.2d 805 (7th Cir., 1960), *cert. den.* 365 U.S. 828 (1961); *Jackson* v. *Carter Oil Company et al.*, 179 F.2d 524 (10th Cir., 1950), *cert. den.* 340 U.S. 812 (1950).

It is thus clear that the District Court had ancillary jurisdiction in this case to restrain the petitioners from attempting to relitigate the identical issues resolved by its prior judgment, which was affirmed on appeal to the Court of Appeals (Pet. App. B).

Petitioners choose to characterize the injunction proceeding as a review of the decision of the Indiana Court of Appeals which, they assert, respondents "persuaded" the District Court to do. Petitioners' gratuitous assertion that respondents *could* have petitioned this Court for certiorari from the decision of the Indiana Court of Appeals, by itself, neither detracts from the District Court's authority to issue the injunction nor converts the injunction proceeding into a review of the State Court's decision. The only thing the respondents persuaded the District Court to do was to restrain relitigation by petitioners in the State Court of identical issues already determined in the Federal Courts. In so

doing, the respondents were not seeking original Federal jurisdiction for the purpose of reviewing a State Court decision. They were merely asking the District Court to exercise in an ancillary fashion the jurisdiction *originally invoked by the petitioners* when they commenced their action in the District Court and affirmed by the original decision of the Court of Appeals (Pet. App. B).

III. The District Court Did Not Review the Decision of the Indiana Court of Appeals

In issuing its injunction, the District Court did not, and did not have to, review the decision of the Indiana Court of Appeals. The only significance of the State Court decision in the injunction proceeding is that it would have permitted the petitioners, unless enjoined from so doing, to prosecute in the State Courts the identical issues previously decided adversely to them in the Federal Courts. Thus, its only significance to this cause is that it created the threat of injury to respondents and the threat to the effectiveness of the District Court's prior judgment, and made necessary the issuance of the injunction in question.

It is significant that Eves cite in support of their argument the case of *Toucey* v. *New York Life Ins. Co.*, 314 U.S. 118 (1941). *It was, in fact, the decision in Toucey which led directly to the amendment by Congress in 1948 of 28 U.S.C., Sec. 2283 to add the very exception with which we are here concerned, so that Federal Courts could enjoin relitigation by State Courts of issues previously decided by the Federal Courts.*

Mitchum v. *Foster*, 407 U.S. 225, 236 (1972).

In a dissenting opinion in *Toucey*, which foreshadowed Congress' amendment of the statute to add the relitigation exception, Justice Reed made the point respecting the inapplicability of the state law governing *res judicata* to the issue of the issuance of an injunction by a Federal Court to effectuate its judgments, as follows:

". . . Questions of res judicata seem inapposite for the conclusion. We are not concerned in either case with the effect of the decrees if and when they might be pleaded in the state actions. Since federal jurisdiction in each case depended upon diversity, their effect as a pleaded bar to recovery in the state suits would depend upon the faith and credit by law or usage given like judgments of courts of the state containing the federal district. But when the preliminary question is the meaning and application of the federal decree as a basis for a conclusion as to whether or not the decree shall be enforced by further steps, it is entirely a federal question. It is immaterial from that point of view whether the federal jurisdiction was bottomed originally on diversity, or the Constitution or laws of the United States. . . . 314 U.S. 118, 142.

". . .

". . . We, too, desire that the difficulties innate in the federal system of government may be smoothed away without a clash of sovereignties but we find no cause for alarm in affirming a court which forbids parties bound by its decree to fight the battle over on another day and field. We should not in reaching for theoretical symmetry hamper the efficiency and needlessly break the continuity of our judicial methodology. *A decree forbidding a defeated party from setting up any right, anywhere, based upon claims adjudged is the usual form where injunctions are appropriate for determining controversies.*" (Emphasis supplied) 314 U.S. 118, 144.

IV. The Court of Appeals' Decision Is Not in Conflict with This Court's Decisions

Petitioners contend that the decision of the Court of Appeals is in conflict with this Court's decision in *Atlantic Coast Line Railroad Company* v. *Brotherhood of Locomotive Engineers, et al.*, 398 U.S. 281 (1970), a case which petitioners assert is factually similar to this case. There is no similarity in the two cases, however, *Atlantic Coast Line* did involve a case where a Federal District Court, in the judgment of this Court, *did in fact*

attempt to review the decision of a State Court in issuing its injunction. This Court's conclusion is stated in its opinion as follows:

> "This record, we think, conclusively shows that neither the parties themselves nor the District Court construed the 1967 order as the union now contends it should be construed. Rather we are convinced that the union in effect tried to get the Federal District Court to decide that the state court judge was wrong in distinguishing the *Jacksonville Terminal* decision. Such an attempt to seek appellate review of a state decision in the Federal District Court cannot be justified as necessary 'to protect or effectuate' the 1967 order. The record simply will not support the union's contention on this point." 398 U.S. 281, 293.

A reading of Atlantic Coast Line makes it clear that this Court simply held that the Federal District Court had not decided the issue in question in the initial proceeding before it, and thus the injunction it issued could not possibly have been entered to protect or effectuate its initial judgment. As previously stated, there is no question in the case at bar that the issues decided by the District Court and those subsequently presented to the State Court are identical and between the same parties, and the record clearly supports the proposition that the District Court issued its injunction solely to protect and effectuate its judgment.

This Court in *Atlantic Coast Line* also made it clear that circumstances do exist, as here, where an injunction must be issued by a District Court. In discussing 28 U.S.C., Sec. 2283 the Court stated:

> "Both exceptions to the general prohibition of § 2283 *imply that some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case. . . .*" 398 U.S. 281, 295 (Emphasis supplied).

Petitioners also assert that the Court of Appeals drew an impermissible distinction between enjoining parties and review-

ing a State Court decision. The alleged impermissible distinction is one between enjoining a party and a Court, which is, of course, a distinction without a difference. The passage referred to in the Court of Appeals' opinion (Pet. A-4) however, was not attempting such a distinction. Petitioners are reading words rather than content. The Court of Appeals was merely pointing out that the issuance of the injunction under the circumstances of this case was not a review of the State Court's decision, as petitioners have consistently chosen to characterize it, but a legitimate exercise of the District Court's ancillary jurisdiction for the purpose of protecting and effectuating its prior judgment.

CONCLUSION

The decision of the Court of Appeals for the Seventh Circuit is proper in all respects and manifestly does not involve any question of magnitude or significance justifying review by this Court. In effect the petitioners merely seek another hearing and it is submitted that such relief is not afforded to a litigant by certiorari to this Court. *Magnum Import Co.* v. *Coty*, 262 U.S. 159 (1923).

There is certainly no special or important reason apparent in this case which should impel this Court in the exercise of its judicial discretion to award the writ. *Layne & Bowler Corp.* v. *Western Well Works, Inc.*, 261 U.S. 387 (1923), and it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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